

COURT NO. 2
THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 115 of 2004

United India Insurance Co. Ltd. **Appellant.**

Versus

Smt. Urmila Devi
And others. **Respondents.**

**Coram: Hon'ble P.C.Verma, J.,
Hon'ble B.S. Verma, J.**

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, (*in short the Act*) against the judgment and Award dated 30-12-2003 passed in M.A.C. Case No. 38 of 2000, Smt. Urmila Devi & others Vs. Sri Ram Singh & another, by Motor Accident Claims Tribunal Tehri Garhwal (*in short the Tribunal*), whereby the learned Tribunal has allowed the claim petition and has awarded Rs.4,83,000/- as compensation along with interest @ 6% per annum, as mentioned in the impugned order, in favour of the claimant-respondent Nos. 1 to 5 under Section 166 of the Act. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the appellant has a right to challenge the impugned award under Section 170 of the Act and the accident in question was result of sole negligence of the deceased and that the quantum of award is exorbitant and the Tribunal has failed to appreciate the evidence on record.

Brief facts of the case, leading to the appeal are that Gulab Singh (*the deceased*) has died in a motor accident involving vehicle NO. UP 08-2966 occurred on 6.11.1999 on Tehri-Uttarkashi motor road, while going to Chinialisaur in Bus No. U.P. 08/2966 as a result of injuries sustained by him due to rash and negligent driving by the driver of the said vehicle. The deceased was 38 years of age

and was earning Rs. 4,000/- hence the petition for compensation by the legal heirs and dependents of the deceased. The opposite parties contested the case by filing their written statements. The insurance company-appellant has denied the allegations made in the claim petition. It has been asserted by the appellant that the driver of the vehicle involved in the accident was not holding a valid driving licence and the owner was not possessing valid documents in respect of the vehicle in question, therefore, the appellant is not liable to pay compensation. The Tribunal has framed necessary Issues in the Case. Ultimately, the Tribunal has come to the conclusion that the motor accident resulting into grievous injuries and consequent death of the deceased was caused due to rash and negligent driving by the driver of bus no. UP 08-2966. In the opinion of the Tribunal the claimants were entitled to get amount of RS. 4,83,000/- as compensation. The Tribunal has come to the conclusion that the driver of the bus in question was holding a valid driving licence. The vehicle/bus has been found to be duly insured with the Insurance Company-appellant. Accordingly the Insurance Company-appellant has been directed to pay the entire amount of compensation, which gave rise to this appeal.

We have heard learned counsel for the appellant, Mr. Naresh Pant as well as learned counsel for the claimant-respondents Mr. N.S. Pundir and have carefully gone through the entire material on record including the impugned judgment and award.

The learned counsel for the appellant has submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Act and, therefore, argued that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation. We have been referred to Annexure-3 to this appeal, which is an application moved before the Tribunal on 17.6.2003 for permission under Section 170 of the Act. But the learned counsel could not indicate that permission was given by the Tribunal. In this case, the owner of the offending vehicle has

contested the case before the Tribunal and has also filed documentary evidence. There is neither permission of the Tribunal under Section 170 of the Act, nor there is any finding that there has been collusion between the owner and the claimants. Therefore, the appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be filed by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex Court judgment in the Case of ***“National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others” [(2002) 7, Supreme Court Cases, 4546]*** IN that case, it has been observed by the Apex Court that ***“even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle”***. Thus, in view of the law laid down by the Apex Court reported in ***(2002) 7, S.C.C. 456 (Supra)***, which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

In view of the discussion aforesaid, the appeal deserves to be dismissed. The judgment and award under appeal is liable to be upheld.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

(B .S.Verma, J.)

(P.C. Verma, J.)

01-09-2004

RCP